

L

int
an
fro

M
Ca
au
wo
Ca

Sim
the
if
rig
niz
cop

BRITISH COPYRIGHT



LORD HERSCHELL'S NEW BILL



ITS EFFECT UPON CANADIAN INTERESTS—A PROTEST
SHOULD BE ENTERED AGAINST CERTAIN
OF ITS CLAUSES



A new copyright Bill, recently introduced by Lord Herschell into the British House of Lords, intituled, "An Act to consolidate and amend the law relating to Copyright," deserves some attention from Canadians.

At the annual dinner of the Society of Authors, held at London, May 2nd, 1898, Sir Martin Conway was good enough to say that Canadian statesmen had frankly recognized the rights of British authors, and that a Canadian Bill would likely be passed which would be eminently satisfactory to English authors and to the Canadian people.

It is, of course, pleasing to hear such an eminent authority as Sir Martin Conway speak in this flattering manner of Canadians and the proposed Canadian Bill. It may, therefore, be said at once, that if Canada is to be allowed to pass and enforce its own copyright legislation, the rights of British authors being frankly recognized therein, this new Bill requires little attention. But if Canadian copyright legislation is to continue to be restricted by Imperial legis-

lation, a comparison of some conditions of the present law with those in the proposed Bill may be interesting.

Under the present Imperial law, first publication of a work in the United Kingdom secures copyright for the work throughout Her Majesty's dominions.

At the present time, in order to secure both Imperial and United States copyright, the publishers of the United States have to publish first in the United States and first in the United Kingdom. It is presumed that simultaneous publication in each country is equivalent to first publication in each country. This frequently necessitates a delay of several days in order to ship a supply of the work from New York to London.

Lord Herschell's new Bill makes this point more definite. He proposes in effect that first or simultaneous publication in any part of Her Majesty's dominions shall secure copyright for the work throughout Her Majesty's dominions.

This new clause of Lord Herschell's Bill will no doubt be gratefully accepted by the publishers of the United States. The ambiguity in the old law is to be swept aside, and *first or simultaneous publication in any part of Her Majesty's dominions* is to secure Imperial copyright. This will not affect Canada, provided Canada is allowed to enact and enforce its own copyright legislation. Otherwise this new clause will be altogether to the advantage of the United States publisher. Under the liberal provision of this clause, the United States publisher will no longer be under the necessity of losing several days in sending copies of a work to London. He will not lose a single day. He will simply have to ship his supply to some Canadian point, *just across the United States border*, publish simultaneously in both countries, and he will have secured copyright throughout the whole English-speaking world.

Another point is worthy of consideration. At the present time the British law is not quite clear as to who may secure

copyright in the United Kingdom. It is certain that a British subject, and probable that an alien, are entitled to copyright. The United Kingdom has an International Copyright Convention with France and other countries. The United Kingdom is also a member of the Berne Copyright Convention. The United States has steadily refused to enter into an International Copyright Convention with the United Kingdom. Nor will the United States enter the Berne Convention. Despite the selfish spirit thus exhibited, Lord Herschell proposes to sweep aside all doubt on an important point, by granting copyright throughout Her Majesty's dominions to an author, *whether he is or is not a British subject*, without any condition as to manufacture.

The Authors' Society of the United States should certainly convene a special meeting, and decide to have a dinner, as a fit and proper mode of celebrating this crowning act of generosity on the part of "John Bull." At the same time, the members might exercise their wit at the expense of "Uncle Sam," who is, at present, somewhat more selfish in regard to this question.

It may be, of course, that Lord Herschell thinks the United States can still be coaxed into eliminating its manufacturing clause. This may happen; but, unfortunately, public opinion in the United States seems to assert that the manufacturing clause is there to stay; although a great many think that the 25% duty on books is quite enough protection without the manufacturing clause.

For some time back, United States publishers have been accepting Lord Herschell's proposed law as an accomplished fact. Here is the copyright notice on a new book, published by Funk & Wagnalls Company, New York and London:

COPYRIGHT, 1898, BY
 FUNK & WAGNALLS COMPANY
 [Registered at Stationers' Hall, London, England]
Printed in the United States of America

This would seem to indicate that the publishers printed the book in the United States, *as they are forced to do* to secure copyright ; that they entered the book at London to secure Imperial copyright ; and that they will supply the British and Canadian markets from New York. Many similar instances could be quoted to show the great advantage that the authors and publishers of the United States have over their confrères in the British possessions.

There is another way in which the United States publisher enjoys an advantage. The well-known "Colonial" libraries are issued by the British publishers for export to British colonies. But the United States publisher can dictate to the British publisher and absolutely forbid him selling the "Colonial" edition of certain books to Canada, a British colony. This is not a supposititious case. It is a fact. It has been done. As the original English editions of these books are fully as high, if not far higher, in price than the United States editions, the practical effect of this dictation is that Canadians have to buy their supply from the United States publisher. Surely this is most unfair to British and Canadian manufacturing interests, as well as an insult to Canadian national sentiment.

The present arrangement is a tremendously one-sided one, with the advantage altogether too much on the side of our neighbors.

Here is the first section of Lord Herschell's Bill :

1. The author of an original literary or artistic work first published in any part of Her Majesty's dominions, or first published simultaneously therein and elsewhere, shall have copyright in his work throughout Her Majesty's dominions, whether he is or is not a British subject.

What will be the effect on Canada should this section become law ?

The Parliament of Canada has frequently asserted its right to enact its own copyright law. But just as frequently the Parliament of Canada has been advised that assent will be refused to any copy-

book
ght ;
ght ;
from
the
tates

en-
sued
the
ab-
ooks
It
s of
the
that
her.
ring

with
oors.

pub-
shed
his
not

ome

nt to
nent
ppy-

right
Sus
poi

to t
Can
Cop
Sta
Can
able
with
Lon
cop
furt
mus
the
Uni
dian
If o
to r
Uni
dian

right

in it
is m
of th

Maje
Cain
men

right Act passed by it that conflicts with Imperial legislation. The Suspended Acts of 1872, 1889 and 1895 speak for themselves on this point.

The Imperial Government has been repeatedly memorialized as to the strong feeling in Canada at the anomalous position in which Canadians are placed owing to the operation of the present Imperial Copyright Act. Canadians cannot secure copyright in the United States unless they manufacture their books in the United States. Canadians bitterly resent the fact that United States authors are able, by first publication in London, to secure copyright in Canada, without manufacture either in the United Kingdom or in Canada. Lord Herschell's Bill, with its more definite proposition as to how copyright may be secured and who may secure copyright, will still further intensify the position. An earnest and vigorous protest must be entered from Canada. Canadians will never consent to the proposition giving copyright in Canada to publishers in the United States, without manufacture in Canada, as long as Canadians are denied copyright in the United States on similar terms. If our fellow British subjects in the Old Land would only attempt to realize Canada's geographical position, side by side with the United States, they would be better able to appreciate why Canadians feel so strongly on this point.

Part II. of Lord Herschell's Bill, dealing with Colonial copyright, is deserving of careful attention.

Her Majesty in Council is given power to modify this new Act in its application to colonial legislation, providing suitable provision is made for the protection of works first published in other parts of the British dominions.

So far as Canada is concerned, this clause may allow of Her Majesty in Council assenting to such an agreement as the Hall Caine compromise, or any Bill drawn up by the Canadian Government. It is to be hoped this may be the case.

The clauses relating to importation are important. The importation of foreign reprints of British copyright books is to be prohibited, except in the case of any colony which will agree to collect, for the copyright owner, a reasonable percentage on imported foreign reprints, and to stamp the words "Foreign reprint" on every copy imported *whether published before or after the commencement of this Act.*

This raises the old complaint against the collection of the royalty duty. This duty has not been collected in Canada since 1895. Canadians argued that they might far better pay a license duty on each copy printed in Canada than to have a royalty duty collected on imported copies. This would help Canadian printers and other workmen, instead of helping the printers in the United States. But the British publishers scoffed at this most reasonable proposition from Canada. Further, the royalty duty was supposed to be collected for British authors; but it was found that the Canadian Government was asked to collect the royalty duty on books by United States authors—which was a very cool proceeding, to say the least. It was little wonder that the Canadian Government refused to continue the collection of the royalty duty on imports.

Part III. of Lord Herschell's Bill deals with International Copyright. Even this part, from a Canadian point of view, is anything but satisfactory. Thus, the present law, 49 and 50 Vict., c. 33, s. 4, authorises Her Majesty in Council to make an order with respect to a foreign country, when that foreign country has made provision for the protection of authors of works first *produced* in the United Kingdom. Lord Herschell seems determined to eliminate all idea of producing books in the United Kingdom. "Produced in the United Kingdom" means clearly enough that the work should be manufactured, if not also written, in the United Kingdom. Lord Herschell is evidently not enamored of this idea. He seems to prefer the more ambiguous expression "published," which may or may not mean manufacturing. In Lord Herschell's new Bill, sec. 38, sub-

sec. (i) the word "published" is substituted for the word "produced," as in the present Act. Should it happen in the future that the United States is included in an Order in Council by Her Majesty, those acquainted with the facts of the case can readily see what a wonderful difference there would be in favor of the United States publisher by the substitution of the word "published" for the more definite word "produced."

If Canadian copyright legislation is to be restricted by Imperial legislation, it is evident that a formal protest from Canada should be entered against certain of the sections of this new Bill.

RICHARD T. LANCEFIELD.

PUBLIC LIBRARY,
HAMILTON, CANADA,
May, 1898.

